

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

THOMAS E. ROSS,

Petitioner,

v.

MARY BERGHUIS,

Respondent.

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Case No. 02-74632

Hon. John Corbett O'Meara

**ORDER DENYING CERTIFICATE OF APPEALABILITY  
AND IN FORMA PAUPERIS STATUS**

On April 23, 2007, Petitioner filed a notice of appeal of this court's order denying his motion for relief from judgment. In response to Petitioner's notice of appeal, this court must determine whether to grant a certificate of appealability. Because Petitioner has not paid the appellate filing fee, the court will also determine whether to grant Petitioner the ability to proceed *in forma pauperis*.

In a habeas corpus proceeding in which the detention complained of arises from process issued by a state court, or in a 28 U.S.C. § 2255 proceeding, the applicant cannot take an appeal unless a circuit justice or a circuit or district judge issues a certificate of appealability under 28 U.S.C. 2253(c). If an applicant files a notice of appeal, the district judge who rendered the judgment must either issue a certificate of appealability or state why a certificate should not issue.

Fed. R. App. P. 22(b). The court may issue a certificate of appealability if the petitioner has made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2).

[T]he petitioner need not show that he should prevail on the merits. He has already failed in that endeavor. Rather, he must demonstrate that the issues are debatable among jurists of reason; that the court could resolve the issues [in a different manner] or that the questions are "adequate to deserve encouragement to proceed further."

Barefoot v. Estelle, 463 U.S. 880, 893 n.4 (1983); Hence v. Smith, 49 F. Supp. 2d 547, 549 (E.D.

Mich. 1999).

The court finds that Petitioner has not made a substantial showing of the denial of a constitutional right. The issues raised in Petitioner's motion are not debatable among jurists of reason, such that they could be resolved differently, and they are not "adequate to deserve encouragement to proceed further." *Id.* Rather, Petitioner merely raises issues that have already been adjudicated by this court and affirmed by the Court of Appeals for the Sixth Circuit. Accordingly, the request for a certificate of appealability is DENIED.

A court may grant *in forma pauperis* status if the court finds that an appeal is being taken in good faith. *See* 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24 (a); *Foster v. Ludwick*, 208 F. Supp. 2d 750, 765 (E.D. Mich. 2002). Good faith requires a showing that the issues raised are not frivolous. *Id.* In the present case, the court will DENY Petitioner leave to appeal *in forma pauperis*, because the appeal would be frivolous. *See Allen v. Stovall*, 156 F. Supp. 2d 791, 798 (E.D. Mich. 2001).

SO ORDERED.

s/John Corbett O'Meara  
United States District Judge

Dated: June 20, 2007

I hereby certify that a copy of the foregoing document was served upon the parties of record on this date, June 20, 2007, by electronic and/or ordinary mail.

s/William Barkholz  
Case Manager